BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

MAY 16 1996

In the matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

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COMMENTS OF TELE-COMMUNICATIONS, INC.

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COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI"), by its attorneys, hereby files it comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

TCI strongly supports the Commission's proposal in the Notice to adopt specific rules of national scope to govern the interconnection rights and obligations of competing networks. This approach most faithfully implements the fundamental goal of the 1996 Act: the development of facilities-based competition. Cable companies, including TCI, present the most significant potential to provide facilities-based competition.

Congress' goal, as the Notice recognizes, cannot be achieved by mere reliance upon the voluntary cooperation of private parties -- the incumbent local telephone companies can be expected to act on their incentives to exploit and extend their

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[1] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (released April 19, 1996) ("Local Competition Notice").

monopolies for as long as ambiguities in the law would arguably permit. The incentive and the ability of the incumbents to delay and frustrate the goal of local competition is already in strong evidence, as TCI describes in detail below.

Recognizing that the nation's telecommunications infrastructure is a national network and that national rules will be required for its efficient development, Congress designated the Federal Communications Commission to develop such rules. Of course, the states continue to have a role in effectuating telecommunications policies, but a new division of responsibilities has been created between federal and state agencies. The Commission establishes the rules necessary to implement Congressional policy; the states act to ensure that incumbent local exchange carriers comply.

In order to achieve Congress' goals, the Commission should promulgate interconnection policies and rules as follows:

- Establish the necessary preconditions for entry by firms willing and able to undertake the risk and expense of facilities-based entry;
- Fully utilize the broad jurisdictional grant given to the Commission to promulgate national rules governing interconnection for both interstate and intrastate services;
- Remove and foreclose state and local regulations that have the effect, either directly or through the imposition of unnecessary and burdensome requirements, of inhibiting the national competitive goals;
- Adopt specific, unambiguous rules, as described herein, that foreclose opportunities otherwise available to incumbent telephone companies to forestall competition in the process of negotiating

and implementing interconnection agreements;

- Most importantly, promulgate pricing rules for interconnection that facilitate prompt and efficient entry, specifically, bill and keep for the "interconnection, transport and termination" of calls on competing networks; and

- Ensure a meaningful and expeditious means of addressing and redressing complaints regarding anticompetitive conduct by incumbent telephone companies.

II. TCI IS PREPARED TO HELP REALIZE THE STATUTORY GOAL OF PROMOTING FACILITIES-BASED COMPETITION

In establishing a "new paradigm" for telecommunications policy that emphasizes competition over regulation, Congress put special emphasis on facilities-based competition.[2] In the 1996 Act, Congress recognized that, because of their existing facilities, cable companies in particular have the potential to provide most expeditiously "the sort of local residential competition that has consistently been contemplated."[3] By

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2 Congress's desire to encourage facilities-based competition is evidenced by various provisions of the 1996 Act. Section 271(c), for instance, requires a BOC, as a pre-condition to entering the long-distance market, to demonstrate either that it is providing access and interconnection to a facilities-based competitor or that no facilities-based company has requested access and interconnection. 47 U.S.C. § 271(c)(1)(A),(B). See also 47 U.S.C. § 253 (preempting local laws that inhibit the provision of competitive telecommunications services); 47 U.S.C. § 652 (precluding ILECs from purchasing cable companies in the ILEC service area and vice versa).

3 H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 147-148 (1996) ("Conference Report"). Indeed, Representative Fields asserted that cable firms "will be the only competitor in (Continued)

making substantial investments in upgraded cable networks, TCI is actively engaged in efforts to bring facilities-based competition to the marketplace.

TCI, through various subsidiaries, has already filed for certification in both Connecticut and Illinois and plans to file soon for authority in California to provide facilities-based competitive local exchange, resale, and interexchange services. TCI Telephony Services of Illinois, Inc expects to launch its comprehensive local telephony service in Arlington Heights, Illinois on August 1, 1996, initially passing more than 23,500 homes and adding 23,000 more by the end of the year. TCI Telephony Services of Connecticut, Inc. anticipates that it will pass 83,240 homes by the end of the third quarter of 1996 and another 79,000 homes by the end of 1996.

TCI will be able to offer a wide variety of telephony services. In addition to dialtone, TCI will offer numerous custom calling features, including three-way calling, caller ID, call forwarding, call trace, return call, and speed dialing. Residential users will also be able to access voicemail services, operator services, 911, E911 and other emergency services, as well as directory assistance. Moreover as a new entrant, TCI

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the residential marketplace." 141 Cong. Rec. H8476 (1995) (Statement of Rep. Fields).

will have the incentive to distinguish telephone service from the incumbents by providing other innovative services. It should be emphasized, though, that only a facilities-based provider like TCI can introduce such innovation. Pure resellers cannot introduce new services into the market. This is why, as explained below, Congress favored facilities-based over resale competition in the 1996 Act and why the Commission should also favor such facilities-based competition.

III. THE COMMISSION'S IMPLEMENTING REGULATIONS SHOULD REFLECT THE PRO-COMPETITIVE GOALS OF THE 1996 ACT

Congress understood that its vision of a "pro-competitive, de-regulatory national policy framework"[4] could be realized only if the Commission adopts specific rules that can easily be enforced. TCI supports the Commission's tentative conclusion that, pursuant to Congress' directive to "establish regulations to implement the requirements of [Section 251]"[5] the Commission can and should establish concrete national rules "to remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry, and to allow entry to take place where it can occur efficiently."[6]

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4 Conf. Report at 113.

5 47 U.S.C. § 251(d).

6 Local Competition Notice at ¶ 12.

The Commission's implementing regulations should foster Congress' desire to encourage diverse competitors and promote the construction of new telecommunications facilities. In this regard, the Commission should establish firm parameters for negotiations between ILECs and CLECs, ensure that pricing policies do not deter facilities-based entrants, and create compensation mechanisms for unbundled elements and interconnection that permit CLECs to compete on an equitable basis.

As NCTA demonstrates thoroughly in its comments in this proceeding, the 1996 Act gives the Commission authority to establish these national rules in order to avoid the delays and impediments inherent in the state-by-state decisionmaking that, to date, has guided the efforts to open the local telecommunications marketplace. In conjunction with the rules implementing Section 251, the 1996 Act also grants jurisdiction to the Commission to develop a set of pricing standards for ILEC services and offerings. These standards, which are mandated by Section 252(d), elaborate on the Section 251 requirements of "just, reasonable, and nondiscriminatory" rates for interconnection and network access and reciprocal compensation arrangements for the interconnection, transport and termination of telecommunications."[7]

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[7] Section 252(d)(1) specifically refers to the just and reasonable rate requirement contained in Sections 251(c)(2) and (c)(3) when setting forth the general pricing standards. (Continued)

A. The Commission's Rules Should Promote Facilities-Based Competition.

It is critically important that the Commission adopt regulations that promote TCI's and other entrants' attempts to upgrade and construct new facilities. While Congress recognized that most competitors will not have fully redundant networks in place when they initially offer local telephone service, it did not believe that resale alone adequately reflects the sort of competition anticipated by the 1996 Act Indeed, Section 271(c) explicitly states that the presence of an entity that merely resells BOC telephone exchange services does not suffice to meet the facilities-based competitor requirement for purposes of the competitive checklist. Although resale is an appropriate "first step in developing competitive local exchange markets,"[8] as a long-term measure, only facilities-based competition will bring enduring benefits to the consuming public.[9]

Because only the existence of true facilities-based competition can justify reliance on market forces to protect

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[8] 141 Cong. Rec. S8369 (1995) (Statement of Sen. Inouye on S.652).

[9] Because "cable services are available to more than 95 percent of United States homes," Congress recognized that cable companies are perhaps in the best position to provide the contemplated facilities-based competition without delay. Conf. Report at 147-48.

consumers, the Commission should design its rules to encourage new entrants to build networks rather than depend primarily on resale. In particular, the Commission should construe the "avoided cost" pricing standard to ensure that ILECs are not required to resell their services at unwarranted discounts.[10] Inefficiently low resale rates will give new entrants the incentive to enter the business without building any alternative facilities and will preclude entities that choose to finance such construction from competing meaningfully with resale providers.

B. The Commission Should Define the "Good Faith" Negotiation Standard.

As described below, ILECs have consistently taken advantage of their superior bargaining power to delay competition and handicap new entrants.[11] In the 1996 Act, Congress recognized the ILECs' historic abuse of their dominant market position and, therefore, explicitly mandated "good faith" negotiations between the parties and directed the Commission to create an environment that will ensure that such negotiations may occur. The Commission's rules should establish clear guidelines to prevent ILECs from abusing their substantial market power to

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[10] Congress rejected the House Commerce Committee's proposal to require resale at rates that are "economically feasible to the reseller." H.R. 155, 104th Cong. 1st Sess. § 101 (July 24, 1995). In choosing the avoided cost standard over this approach, Congress plainly intended to limit the exposure of wholesale providers and, thereby, encourage facilities-based entrants. The Commission's rules interpreting "avoided cost" should reflect these goals.

[11] See Section V, infra.

undermine the removal of barriers and economic obstructions that lies at the heart of the 1996 Act. Negotiations that take place against the backdrop of clear guidelines established by the Commission are significantly more likely to result in fair bargaining and true competition. Based on the ample precedent of "bad faith" negotiations,[12] the Commission should provide examples of ILEC tactics that will result in swift and effective sanctions.[13]

C. The Pricing Standards Should Afford the Opportunity for New Entry.

The Commission should ensure that its rules establishing the mechanisms by which interconnection and unbundled elements are priced actually allow meaningful participation by new entrants. As Congress recognized, these entities "will face tremendous obstacles since they will be competing against an entrenched service provider." [14] Adoption of fair and efficient pricing standards, such as those suggested below by TCI, is the decisive

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12 See Section V, infra, for examples of ILEC tactics the Commission should explicitly prohibit.

13 The Commission has provided some examples of what it considers bad faith negotiations, including unilateral submission of a tariff on non-negotiated terms, rendering negotiations meaningless, and unwarranted delay. See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding), Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2370-2371 (1989).

14 House Report at 74.

factor as to whether parties will enter the telecommunications marketplace and provide the sort of competition envisioned by the 1996 Act.

D. The FCC Should Strictly Enforce Its Interconnection Rules.

The FCC must also strictly enforce its interconnection rules. It must make it clear that complaints filed by CLECs under Section 208 asserting ILEC violations of the interconnection provisions of the Communications Act or the rules implementing those provisions will be given expedited treatment. Where violations are found, they should punished severely. In addition to Section 208, the Commission also has other enforcement mechanisms available, including both its authority to issue declaratory rulings under the Administrative Procedure Act, 5 U.S.C. § 554(e), and its power to initiate its own investigations of anticompetitive behavior under Section 403.TCI anticipates that the FCC will propose specific enforcement mechanisms for applying these stationary provisions to the interconnection context. TCI hopes to work with the Commission in this process.

IV. THE 1996 ACT ASSIGNS DISCRETE ROLES TO THE COMMISSION AND THE STATES TO ACHIEVE CONGRESS'S PRO-COMPETITIVE GOALS

While the establishment of explicit federal rules will help deter excessive litigation, the states continue to have an important role under the 1996 Act. Indeed, they are responsible for ensuring that the Act's mandates are carried out in each jurisdiction and they are the proper venue for complaints

regarding ILEC violations of interconnection agreements. The adoption of uniform guidelines does not usurp the role of state commissions; rather, it enables them to fulfill their jobs more effectively.

A. Congress gave the FCC The Primary Policymaking Role But Allowed For State Regulation Consistent With Federal Policies

The Commission is correct that Sections 251 and 252, as well as its own implementing regulations, apply to both the interstate and intrastate aspects of interconnection, service and network elements. Both the explicit language of Section 251 and the overall purposes of the 1996 Act support this interpretation. Indeed, Congress directed the Commission to establish regulations under Section 251 to implement the "specific requirements of openness and accessibility that apply to LECs as competitors enter the local market."[15] For example, Section 251 requires the Commission to adopt regulations governing the ILECs' provision of interconnection "for the transmission and routing of telephone exchange service," historically a local communications service. This authority granted to the Commission over local competition matters would be meaningless if the Commission's jurisdiction was limited to interstate services. Under the statute, the Commission is expected to set rules, which the states must apply through the arbitration and approval process. If Congress had

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[15] Id. at 71.

intended to restrict the Commission's rule-setting authority to interstate services, or if it had expected that states would only oversee intrastate negotiations, it would have thus provided.

Section 2(b), which generally precludes the Commission from regulating intrastate services, does not compel a different result.[16] As the Commission tentatively concludes, Section 2(b) must be read in light of the later amendments to the statute that clearly grant jurisdiction over both intrastate and interstate matters to the Commission in the first instance.[17] Because Section 251(d) directly confers broad authority on the Commission to "establish regulations to implement the requirements" of that section,[18] interpreting Section 2(b) to preclude the exercise of such jurisdiction would directly conflict with Congress subsequently expressed intent.[19]

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16 47 U.S.C. § 152(b).

17 Local Competition Notice at ¶ 39.

18 47 U.S.C. § 251(d).

19 Under Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986), a court will examine "the nature and scope of the authority granted by Congress to the agency" to determine whether the regulations of the agency are intended to displace state law.

B. The Commission Must Preempt Inconsistent State Regulations and Ensure that States Do Not Erect Barriers To Entry.

Despite its mandate for federal rules, Congress expressly preserved the authority of state commissions over local competition matters by providing that the Commission may not preclude enforcement of any state regulation, order, or policy that "is consistent with the requirements of [Section 251]" and "does not substantially prevent implementation of the requirements of [Section 251] and the purposes of [the portion of the 1996 Act dealing with the development of competitive markets]."[20] Thus, as discussed below, to the extent a particular state's policies are compatible with the overall goals of the 1996 Act, the Commission must allow them to stand. Indeed, as the Commission suggests, such policies should be used as guidance for the Commission's development of explicit national rules that will apply in all jurisdictions.

If state rules conflict with, or undermine the purposes of, the 1996 Act, however, the Commission must ensure that they are brought into conformance. For example, state commissions may not require carriers that have not been designated as ILECs to satisfy any of the obligations the statute imposes solely on

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20 See Local Competition Notice at ¶ 157 (citing 47 U.S.C. § 251(d)(3)).

ILECs.[21] In setting up its sliding scale of obligations for various carriers, Congress expressed a clear intention that competition would evolve more rapidly if CLECs face minimum obstacles to entry. Under the 1996 Act, CLECs may not be treated as incumbents until and unless the Commission determines that they have acquired equivalent market power, have substantially replaced an ILEC, and that such reclassification is in the public interest.[22] It is not within the power of state Commissions to alter this congressionally-mandated balance.[23]

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21 See Local Competition Notice at ¶ 45.

22 47 U.S.C. § 251(h)(2).

23 These problems have occurred in a numbr of states already. For example, despite Congress's determination that only ILECs must resell their services at wholesale rates, the New York Public Service Commission has imposed a wholesale rate requirement on new entrants' resale services. See Case No. 95-C-0657, Joint Complaint of AT&T Communications of New York, Inc., et al. Against New York Telephone Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of the New York Telephone's Tariff No. 900, Order Considering Loop Resale and Links and Ports Pricing at 7 (issued and effective November 1, 1995) ("New York Order"), modified on other grounds, Cases 95-C-0657, 94-C-0095, 91-C-1174, Joint Complaint of AT&T Communications of New York, Inc., et al. Against New York Telephone Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of the New York Telephone's Tariff No. 900, Order Considering Loop Resale and Links and Ports Pricing at 8 (denying reconsideration of application of resale requirement to new entrants) (issued and effective February 1, 1996). Similarly, both the Colorado Public Utilities Commission and the Illinois Commerce Commission have imposed unbundling requirements on CLECs that are at odds with the 1996 Act's determination that only ILECs must unbundle their networks. Colorado Public Utilities Commission, Proposed Rules Regarding Implementation of §§ 40-15-101 et seq. -- Requirements Relating to Interconnection and Unbundling; (Continued)

Congress also recognized that where cable operators seek to enter the telecommunications market, local franchising authorities must not be permitted to use their jurisdiction over video services as a basis for regulating the telecommunications services offered by cable operators. In fact, Congress specifically added Section 303 of the 1996 Act, codified at 47 U.S.C. § 621, which expressly preempts LFAs from prohibiting, limiting, restricting, or conditioning franchisees' provision of telecommunications services.

The Commission also should adopt standards that prevent states from sabotaging the competitive checklist by granting wholesale modifications and suspensions under Section 251(f) of the 1996 Act.[24] The Commission has consistently held that waivers and exemptions will be granted only so long as they do not undermine the effectiveness of corresponding rules and

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Docket No. 94-0049, Illinois Commerce Commission on Its Own Motion: Adoption of Rules on Line-Side Interconnection and Reciprocal Interconnection, Interim Order, 1995 Ill. PUC LEXIS 229 at 19 (April 7, 1995). In Connecticut, the Department of Public Utility Control is now in the process of deciding how CLECs should be treated and recently launched an inquiry into whether there should be "a Minimum investment threshold and/or minimum penetration level" before unbundling and resale requirements are imposed on new entrants. See also infra - for a discussion of Colorado's decision to treat CLECs as ILECs.

24 47 U.S.C. § 251(f).

policies.[25] To allow states to accomplish through a backdoor what they cannot do directly would thwart the pro-competitive objectives of the 1996 Act.

Under Section 253, Congress similarly expressed its intention that states and municipalities not be permitted to slow down competition through the erection of barriers to entry. The provision directs the Commission to preempt any state or local regulations or policies that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[26]

The Commission also should clarify the extent to which municipalities have control over rights-of-way under Section 253. While this regulatory power is reserved for state and local governments, it must not be exercised in a manner that makes it unreasonably difficult or costly for carriers to provide service.

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25 See, e.g., In the Matter of Pacific Bell Petition for Waiver of 800 Data Base Access Time Requirements; BellSouth Petition for Waiver of 800 Data Base Access Time Requirements, Memorandum Opinion and Order, 1995 FCC LEXIS 1375, at *11 (Common Carrier Bureau 1995); In the Matter of BellSouth Telecommunications Petition for Limited Waiver of Network Disclosure Requirements, Memorandum Opinion and Order, 9 FCC Rcd 4847, 4848 (Common Carrier Bureau 1994) ("We conclude that any waiver of the network disclosure requirements must be narrowly tailored to preserve the effectiveness of the network disclosure requirements."); In the Matter of U S WEST Communications, Inc. Petition for Limited Waiver of Network Disclosure Requirements, Memorandum Opinion and Order, 6 FCC Rcd 3398, 3399 (Common Carrier Bureau 1991).

26 47 U.S.C. § 253.

Thus, any compensation collected from telecommunications providers must be "fair and reasonable" and must correspond to the actual use made of the public land.[27] Similarly, the authority to "manage the public rights-of-way" does not allow municipalities to impose franchise obligations on cable company provision of telecommunications services.[28]

V. THE EXPERIENCE OF TCI AND OTHER CLECS DEMONSTRATES THE NEED FOR SPECIFIC, NATIONAL INTERCONNECTION RULES AND STRONG ENFORCEMENT MECHANISMS.

As described above, in order for widespread facilities-based local competition to develop, the Commission must, at a minimum, do the following: (1) establish specific rules for interconnection, and (2) punish anticompetitive behavior swiftly and severely. Without these essential preconditions to competition, ILECs will continue to have the ability and the incentive to engage in the anticompetitive tactics described below.

A In Establishing Interconnection Rules, The Commission Should Follow The Examples Of States That Have Been Especially Effective In Promoting Local Competition.

Although the Commission must take the lead in establishing interconnection rules, it should recognize the critically important contribution that certain states have made to the

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27 47 U.S.C. § 253(c).

28 Conf. Report at 179-80. Also, see discussion at pp. 19-21, infra.

development of local competition. In particular, TCI recommends that the Commission follow rules established in states that have been especially effective in defining the terms and conditions under which competition can develop.

Of the states in which TCI has been involved in the formulation of interconnection rules, Washington, California and Connecticut have been particularly effective in setting rules that will permit facilities-based competition. For example, these states (1) have adopted bill and keep as an interim approach to the pricing of transporting and terminating calls between competing carriers;[29] (2) require ILECs to interconnect with new entrants on the same terms and conditions they use to interconnect with other incumbent LECs;[30] and (3) require ILECs to offer 911, directory listings, operator services, and directory assistance to new entrants on the same rates, terms and conditions they offer those services to other ILECs.[31]

Moreover, certain of Colorado's interconnection policies have also been effectively crafted. In particular, over the objections of U S WEST, Colorado adopted bill and keep as an

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29 See e.g., Washington Utilities and Transportation Comm'n v. U S WEST Communications, Inc., Dkt. No. UT-941464, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, In Part, at 31 (Wash. UTC, Oct. 31, 1995).

30 See e.g., id. at 45-47.

31 See e.g., id. at 57.

interim approach to the pricing of interconnection, transport and termination for three years or until six months after full service provider number portability has been implemented. Like Washington, Colorado also requires ILECs to interconnect with new entrants on the same terms and conditions they use to interconnect with other incumbent LECs;[32] and requires ILECs to offer 911, directory listings, operator services, and directory assistance to new entrants on the same rates, terms and conditions they offer those services to other ILECs.

It should be pointed out, however, that other aspects of Colorado's regulatory regime are potentially destructive to competition. For example, the Colorado Commission decided that CLECs that have been certified to provide telecommunications service within the state for three years will be treated as incumbent LECs and therefore be required to unbundle their networks unless the PUC determines that to so would not be in the public interest.

This approach to unbundling CLEC networks is prohibited by the 1996 Act. Section 251(c) places unbundling requirements only on ILECs. Section 251(h) states that a CLEC may be reclassified as an ILEC only if it has achieved the level of market power that

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32 See In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101 Et. Seq. -- Requirements Relating to Interconnection and Unbundling, Dkt. No. 95R-556T, Commission Decision Adopting Rules, at 13-14 (CO PUC, March 29, 1996).

warrants the imposition of unbundling and other requirements imposed only on ILECs. This is a determination that can be made only the FCC may make this determination.

B. The FCC Should Not Permit Local Franchising Authorities to Regulate Cable Operators' Provision of Telecommunication Services

As just explained, it is critical that local franchising authorities not be permitted to regulate telecommunications services offered by cable operators. TCI's experience in Troy, Michigan illustrates how destructive such regulation can be. On December 18, 1995, the Troy City Council approved a resolution requiring prospective providers of telecommunications services to apply for and obtain a franchise pursuant to which Troy would regulate the rates charged for telecommunications services and levy a franchise fee for the provision of those services.[33] The ordinance applies only to prospective providers of telecommunications and is therefore inapplicable to Ameritech, the incumbent in Troy. Even after the enactment of the 1996 Act, the City of Troy denied TCI's request for a construction permit to upgrade its cable facilities to provide improved video

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[33] See Troy City Code, Chap. 62, § 4(1) ("No Person shall install, construct, maintain or otherwise operate a Telecommunication System in the City without a telecommunication License and no person shall transact local business on a Telecommunication System in the City without a Franchise."); see also id. at § 4(2) ("This ordinance shall apply to any existing cable television system."); § 7 (establishing rate regulation), and § 9 (requiring a Franchise Formation fee of $10,000 plus an annual fee tied to a percentage of gross revenue).

services on the stated grounds that TCI may attempt to deliver telecommunications services over the upgraded cable system. The City indicated that TCI would need a telecommunications franchise in addition to its cable franchise before it would permit the upgrade.[34] Meanwhile, Troy has granted Ameritech a cable franchise.

The situation in Troy offers a clear example of the need for swift and efficient FCC enforcement mechanisms. As TCI has repeatedly told the Troy City Council, local franchising authorities are forbidden by the Communications Act from requiring a franchise from cable operators or their affiliates for the provision of telecommunications services,[35] and further from imposing "any requirement . . . that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof."[36] Troy has nonetheless continued to insist on enforcing its telecommunications ordinance. Only swift Commission intervention can stop determined LFAs[37] from flouting

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34 Id.

35 Section 621(b)(3)(A), 47 U.S.C. § 541(b)(3)(A).

36 Section 621(b)(3)(B), 47 U.S.C. § 541(b)(3)(B).

37 Indeed, the point applies more often to ILECs than to LFAs. TCI has nonetheless focused on Troy Michigan because the entry barriers created by aggressive local governments are often overlooked. Moreover, given that those barriers usually prevent cable companies, who provided for the most significant opportunity for true facilities-based competition in the foreseeable future, from entering the (Continued)

the national rules for competition in this manner. Such an approach would deter other local governments from establishing similarly destructive regulations.

C. The Experience Of TCI And Other CLECs Supports The Need For Effective Rules And Enforcement.

Experience has taught that incumbents will exploit any ambiguity in the law to delay interconnection negotiations and undermine competitive entry. In particular, it has become clear that without specific and clear pricing rules, competitive entry is much more difficult and expensive, and in some cases simply impossible. For example, in the Colorado PUC's interconnection proceedings, all interested parties were required to try to reach a consensus on the terms and conditions for interconnection before submitting unresolved issues to the Commission. During the policy negotiations with U S WEST, TCI and the other CLECs were able to reach a satisfactory agreement on most aspects of interconnection except pricing. The absence of specific pricing rules gives U S WEST the opportunity to unilate4rally delay local exchange competition, for the most significant interconnection term -- price -- remains unresolved. As a result, no CLEC has yet reached an interconnection agreement with U S WEST.

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telephone business, they are an extremely serious problem for competition in general.